

SERIAL 02043 - C PORTLAND CEMENT

CONTRACT PERIOD THROUGH JUNE 30, 2004

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **PORTLAND CEMENT**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **June 26, 2002**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

WP/jmk
Attach

Copy to: Clerk of the Board
 Jim Baker, MCDOT
 Sharon Tohtsoni, Materials Management

(Please remove Serial 97104-X from your contract notebooks)

SPECIFICATIONS ON INVITATION FOR BID FOR: **PORTLAND CEMENT**

1.0 **INTENT:**

The intent of this Invitation for Solicitation is to establish a contract for Portland Cement, as specifically listed herein. Also included are blanket discounts for related supplies as covered by current pricing documents. Amendments, supplements and/or revisions will be effective upon receipt and approval of notice to the Department of Materials Management.

2.0 **TECHNICAL SPECIFICATIONS:**

2.1 Cement shall be Portland Cement, in conformance with the requirements of ASTM C-150, Type II, low alkali and the requirements of Maricopa Association of Governments 725.2.

2.2 Cement shall be delivered in original unopened sacks that have been filled at the mill and bear the name or brand of the manufacturer and the type of cement plainly marked thereon. Each sack shall contain 94 pounds of cement. (On an as required basis, requests for sacks of less than 94 pounds may be made or available locally in bulk for County/Contract trucking.

2.3 Delivery is to be made in 560 sack quantities on pallets of 35 sacks. Pallets to be exchanged or to be no-deposit (non-returnable) pallets. Vendor to specify, concerning preferred delivery quantities and pallet policies.

2.4 **TAX:**

No tax shall be levied against labor. Bid pricing to include all labor, overhead tools and equipment used, profit, and any taxes that may be levied. It is the responsibility of the Contractor to determine any and all taxes and include the same in bid price.

2.5 **DELIVERY:**

Delivery is required F.O.B. Destination, freight pre-paid within twenty-four (24) hours of receipt of Purchase Order, to any delivery location within Maricopa County as specified by the County. Contractor shall indicate on Pricing Documentation (Attachment A) any additional freight or handling charges that would be associated with special shipping and/or handling delivery.

2.6 **STOCK:**

The Contractor shall be expected to stock locally sufficient quantities as may be necessary to meet the County's needs.

2.7 **ACCEPTANCE:**

Once the Materials have been delivered, the Using Agency shall have a reasonable opportunity to inspect them. The Using Agency shall have five (5) days to perform its acceptance testing and inspection of the Materials, after which time the Materials shall be deemed accepted unless the Using Agency rejects the Materials.

2.8 **WARRANTY:**

The successful Bidder must guarantee his product against any defect in workmanship or materials. Failure to comply with this requirement shall result in immediate return of the merchandise at the expense of the bidder for prompt replacement with merchandise meeting the standards listed herein. Should the bidder not meet this condition, the County shall obtain its requirements on the open market and the contractor shall be obligated to assume excess costs, if applicable.

2.9 **BRAND NAME:**

Bids on brands other than those listed are subject to approval based on evaluation. Maricopa County reserves the right to request samples to determine quality and acceptability of products bid. In some cases brands have been listed to define quality of products desired and is not intended to be restrictive or limit competition. Products substantially equivalent to those designated shall qualify for consideration.

2.10 **SAMPLES :**

Contractors may be requested to furnish samples of items proposed for examination by the County. Any items so requested shall be furnished within five (5) working days from the date of request and furnished at no cost to the County and sent to the address designated in the Invitation for Bids.

2.11 **WAREHOUSE/DISTRIBUTION CENTER:**

The Contractor shall have access to a local warehouse/distribution center with the Phoenix metropolitan area capable of providing the goods listed herein at the time of bid submission. Maricopa County reserves the right to inspect such warehouse/distribution center(s) to ensure compliance with terms and conditions of the Invitation for Bids.

2.12 **TECHNICAL AND DESCRIPTIVE SALES LITERATURE:**

Contractor shall provide copies of its sales literature and brochures, and copies of any manufacturer's technical and descriptive literature regarding the material it proposes to provide. Literature shall include sufficient in detail to allow full and fair evaluation of the offer submitted, and must be included with the bid. Failure to include this information may result in the bid being rejected.

2.13 **ADDITIONAL PRICING:**

Contractors are strongly encouraged to offer additional pricing for related items/products/components, which are not specifically addressed as line items in the Invitation For Bids. Pricing offered should be noted on the pricing pages of the Contractor response in the format requested. Two sets of catalogs/pricing documents shall accompany any additional pricing offered.

2.14 **CONTRACTOR REVIEW OF DOCUMENTS :**

Contractor shall review its bid submission to assure the following requirements are met.

- 2.14.1 One (1) original and one (1) copy of all submissions is MANDATORY
- 2.14.2 Pricing pages, MANDATORY
- 2.14.3 Copies of Catalogs/Pricing Documents, MANDATORY
- 2.14.4 Literature, Technical and Descriptive, MANDATORY
- 2.14.5 Vendor Information, MANDATORY
- 2.14.6 Agreement page, MANDATORY
- 2.14.7 References, MANDATORY

3.0 **SPECIAL TERMS AND CONDITIONS:**

3.1 **CONTRACT LENGTH:**

This Invitation for Bids is for awarding a firm, fixed price purchasing contract to cover a two (2) year period.

3.2 **OPTION TO EXTEND:**

The County may, at their option and with the approval of the Contractor, extend the period of this Contract up to a maximum of three (3), one (1) year options. The Contractor shall be notified in writing by the Materials Management Department of the County's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period.

3.3 **EXPEDITED DELIVERY:**

If the Using Agency determines that rush shipping or other alternate shipping is required, it shall notify the Contractor. The Contractor shall determine any additional costs associated with such delivery terms and communicate that cost to the Using Agency via fax or other reasonable means.

The Using Agency shall not advise the Contractor to proceed with shipment until acceptable terms are negotiated and a purchase order is issued. Upon determining that the additional costs are reasonable and proper, the Using Agency shall advise the Contractor to proceed.

Upon receipt of material and invoicing, the Using Agency shall ensure that any additional charges are in compliance with and do not exceed those costs stated in the Contract. The Using Agency shall retain all documents related to these costs within the agency purchase order file, for audit purposes.

3.4 **SHIPPING:**

Bid prices shall be made F.O.B. destination to the Using Agency within Maricopa County.

The Contractor shall retain title and control of all goods until they are delivered and the contract coverage has been completed. All claims for visible or concealed damage shall be filed by the Contractor. The County will notify the Contractor of any damaged goods and shall assist the Contractor in arranging for inspection.

3.5 **SHIPPING DOCUMENTS:**

A packing list or other suitable shipping document shall accompany each shipment and shall include the following:

- (1) Name and address of the Contractor;
- (2) Name and address of the County Agency;
- (3) County purchase order number;
- (4) A description of material shipped, including item number, quantity, number of containers and package number, if applicable.

3.6 **TESTING:**

Unless otherwise specified, Materials purchased will be inspected by the Using Agency to ensure the Materials meet the quality and quantity requirements of the Specifications. When deemed necessary by the County, samples of the Materials may be taken at random from stock received for submission to a commercial laboratory or other appropriate agency for analysis and tests as to whether the Materials conform in all respects to the Specifications. In cases where commercial laboratory reports indicate that the Materials do not meet the Specifications, the expense of such analysis is to be borne by the Contractor.

3.7 **PRODUCT DISCONTINUANCE:**

In the event that a manufacturer discontinues a product and/or model, the County may allow the successful Contractor to provide a substitute for the discontinued item or may cancel the Contract. If the Contractor requests permission to substitute a new product or model, it shall provide the following to the County:

- 3.7.1 Documentation from the manufacturer that the product of model has been discontinued.
- 3.7.2 Documentation that names the replacement product or model.
- 3.7.3 Documentation that provides clear and convincing evidence that the replacement meets or exceeds all Specifications required by the original Invitation for Bids.
- 3.7.4 Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- 3.7.5 Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

Product discontinuance applies only to those items specifically listed on any resultant contract. This will not apply to catalog items not specifically listed on any resultant contract.

3.8 **ORDERING AUTHORITY:**

Contractors should understand that any request for purchase of materials or services shall be accompanied by a valid purchase order, issued by Materials Management, or by a CAPA (Certified Agency Procurement Aid). **CAPA purchases are limited to values of less than \$2,500.00. No other request is valid.**

3.9 **INDEMNIFICATION AND INSURANCE:**

3.9.1 Indemnification.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees and costs, relating to this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the negligence of the County.

3.9.2 Insurance Requirements:

Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to the County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the County, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the County, and any insurance or self-insurance maintained by the County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the County.

The Contractor shall be solely responsible for the deductible and/or self-insured retention and the County, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The County reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name the County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The insurance policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against the County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

3.9.2.1 Commercial General Liability. Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for Contractor's operations and products and completed operations.

If the Contractor subcontracts any part of the work, services or operations awarded to the Contractor, Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the performance of the Contractor's work, service or operations under this Contract.

Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

3.9.2.2 Automobile Liability. Contractor shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to Contractor's vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.

- 3.9.2.3 **Workers' Compensation.** The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

If any work is subcontracted, the Contractor will require Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the Contractor.

3.9.3 **Certificates of Insurance.**

- 3.9.3.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

- 3.9.3.2 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the County fifteen (15) days prior to the expiration date.

3.9.4 **Occurrence Basis.**

All insurance required by this contract shall be written on an occurrence basis rather than a claims-made basis.

3.9.5 **Cancellation and Expiration Notice.**

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

3.10 **PROCUREMENT CARD ORDERING CAPABILITY:**

It is the intent of Maricopa County to utilize the Bank of America MasterCard Procurement Card, or other procurement card that may be used by the County from time to time, to place and make payment for orders under the Contract. Contractors without this capability may be considered non-responsive and not eligible for award consideration.

3.11 **INTERNET ORDERING CAPABILITY:**

It is the intent of Maricopa County to utilize the Internet to place orders under this Contract. Contractors without this capability may be considered non-responsive and not eligible for award consideration.

3.12 **INQUIRIES AND NOTICES:**

All inquiries concerning information herein shall be addressed to:

MARICOPA COUNTY
DEPARTMENT OF MATERIALS MANAGEMENT
ATTN: CONTRACT ADMINISTRATION
320 W. LINCOLN ST.
PHOENIX, AZ 85003

Administrative telephone inquiries shall be addressed to:

WALT PRICE, PROCUREMENT CONSULTANT, 602-506-3454
(wprice@mail.maricopa.gov)

Technical telephone inquiries shall be addressed to:

JIM BAKER, DEPARTMENT OF TRANSPORTATION, 602-506-4054

Inquiries may be submitted by telephone but must be followed up in writing. No oral communication is binding on Maricopa County.

4.0 **CONTRACT TERMS AND CONDITIONS:**

4.1 **LANGUAGE FOR REQUIREMENTS CONTRACTS:**

Contractors signify their understanding and agreement by signing this document, that the Contract resulting from this bid will be a requirements contract. However, this Contract does not guarantee any purchases will be made. It only indicates that if purchases are made for the materials contained in this Contract, they will be purchased from the Contractor awarded that item. Orders will only be placed when a need is identified by a Using Agency or department and proper authorization and documentation have been approved.

The Department of Materials Management reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc.

Contractors agree to accept verbal notification of cancellation from the Department of Materials Management with written notification to follow. By submitting a bid in response to the Invitation For Bids, the Contractor specifically acknowledges to be bound by this cancellation policy.

4.2 **ESCALATION:**

Any requests for reasonable price adjustments must be submitted thirty (30) days prior to the Contract Anniversary date. Justification for the requested adjustment in cost of labor and/or materials must be supported by appropriate documentation and must be within the PPI for the commodity. Increases are subject to approval in writing by the Materials Management Department prior to any adjusted invoicing submitted for payment.

4.3 **UNCONDITIONAL TERMINATION FOR CONVENIENCE:**

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

4.4 TERMINATION FOR DEFAULT:

If the Contractor fails to meet deadlines, or fails to provide the agreed upon service/material altogether, a termination for default will be issued. The termination for default will be issued only after the County deems that the Contractor has failed to remedy the problem after being forewarned.

4.5 TERMINATION BY THE COUNTY:

If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate this Contract.

If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of a substantial violation of any provision of this Contract, then the County may terminate this Contract. Prior to termination of this Contract, the County shall give the Contractor fifteen (15) calendar days written notice. Upon receipt of such termination notice, the Contractor shall be allowed fifteen (15) calendar days to cure such deficiencies.

4.6 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.7 OFFSET FOR DAMAGES :

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.8 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete materials to this Contract. If a service requirement is deleted, payment to the Contractor will be reduced proportionately, to the amount of service reduced in accordance with the bid price. If additional materials are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.9 SUBCONTRACTING:

The Contractor may not assign this Contract or Subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job project.

The Subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates. The Subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the Subcontractor's invoice must accompany the Prime Contractor's invoice.

4.10 **AMENDMENTS :**

All amendments to this Contract must be in writing and signed by both parties.

4.11 **RETENTION OF RECORDS:**

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The Department, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

4.12 **ADEQUACY OF RECORDS:**

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable materials were provided, the Contractor shall reimburse Maricopa County for the materials not so adequately supported and documented.

4.13 **AUDIT DISALLOWANCES :**

If at any time it is determined by the Department that a cost for which payment has been made is a disallowed cost, the Department shall notify the Contractor in writing of the disallowance and the required course of action, which shall be at the option of the Department either to adjust any future claim submitted by the Contractor by the amount of the disallowance or to require repayment of the disallowed amount by the Contractor forthwith issuing a check payable to Maricopa County.

4.14 **VALIDITY:**

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.15 **RIGHTS IN DATA :**

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder

L AND M BUILDING MATERIALS, 6638 N. 58TH DRIVE, GLENDALE, AZ 85301

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: X YES NO

ACCEPT PROCUREMENT CARD: X YES NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: X YES NO
 % REBATE

INTERNET ORDERING CAPABILITY: YES X NO

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: X YES NO

B0608652 / C561003

PRICING:

Unit price as bid for sacks of PORTLAND CEMENT in accordance with specification in item 2.1:

1. Cement, (94 lb. Sack) (F.O.B. Destination) \$5.87 / sack
2. Cement, (94 lb. Sack) (F.O.B. Vendor location) \$5.80 / sack
3. Cement, (smaller than 94 lb., if available (F.O.B. Destination) vendor to specify weight:
 47 lb. \$3.00 / sack
4. Cement, (smaller than 94 lb., if available (F.O.B. Vendor location) vendor to specify weight:
 47 lb. \$3.00 / sack
5. Cement, bulk, on an as required basis (F.O.B. Destination) NO BID
6. Cement, bulk, on an as required basis (F.O.B. Vendor location) NO BID
7. Delivery structure/rate, when cement is delivered within Maricopa County to other than main warehouse (2222 S. 27th Avenue, Phoenix, AZ):
 - a. Sacks: Vendor to state minimum order (if any) and structure/rate: 560 Sacks / \$150.00 delivery
 - b. Bulk: Vendor to state minimum order (if any) and structure/rate: NO BID
8. Plant or storage location in Greater Phoenix Area: 6638 N. 58TH DRIVE, GLENDALE, AZ 85301
9. Delivery (days after receipt of order): One
10. Minimum order, if any, for delivery to main warehouse: 560 Sacks

L AND M BUILDING MATERIALS, 6638 N. 58TH DRIVE, GLENDALE, AZ 85301

Terms:	NET 30
Federal Tax ID Number:	86-0914814
Telephone Number:	623-934-7219
Fax Number:	623-934-7210
Contact Person:	TOM HAENFLER
Vendor Number:	860914814 A
E-mail Address:	haenfler@earthlink.net
Company Website:	www.imblockrockpatio.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending June 30, 2004.